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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION**

Elizabeth HUNTER; Veronica Bonifacio)
PENALES; Alex DURON; Zayn SILVA;)
Rachel MOULTON; Victoria Joy BACON;)
Avery BONESTROO; Nathan BRITTSAN;)
Hayden BROWN; Devin BRYANT; Consolata)
BRYANT; Brooke C.; Gary CAMPBELL;)
Tristan CAMPBELL; Natalie CARTER; Saren)
CRAIG; Mortimer HALLIGAN; Rachel)
HELD; Lauren HOEKSTRA; Chandler)
HORNING; Louis JAMES; Jonathan JONES;)
Jamie LORD; Ashtin MARKOWSKI; Cameron)
MARTINEZ; Joanna MAXON; Mackenzie)
MCCANN; Darren MCDONALD; Scott)
MCSWAIN; Faith MILLENDER; Jaycen)
MONTGOMERY; Journey MUELLER; Jake)
PICKER; Danielle POWELL; Megan)
STEFFEN; Justin TIDWELL-DAVIS; Daniel)
TIDWELL-DAVIS; Spencer J. VIGIL; Lucas)
WILSON; and Audrey WOJNAROWISCH, on)
behalf of themselves and all others similarly)
situated,)

Plaintiffs,)

v.)

U.S. DEPARTMENT OF EDUCATION; and)
Suzanne GOLDBERG, in her official capacity as)
Acting Assistant Secretary for the Office of)
Civil Rights, U.S. Department of Education.)
Defendants.)

Case No. 6:21-cv-00474-AA

**PLAINTIFFS' UNOPPOSED
MOTION TO STRIKE
PROPOSED INTERVENORS'
OPPOSITIONS TO
TEMPORARY RESTRAINING
ORDER AND ORDER TO
SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ENTER (DKT.
53, 55) AND PROPOSED
MOTIONS TO DISMISS (DKT.
54, 68).**

LR 7-1 CONFERRAL

Counsel for Plaintiffs conferred with counsel for Defendants. Defendants communicated their position as follows: “Defendants take no position on Plaintiffs' motion to strike and therefore do not oppose it.”

MOTION

Plaintiffs hereby move for an order striking: (1) CCCU's Response to Plaintiffs' TRO/PI, Dkt. 53; (2) Phoenix Seminary, Western Baptist College, and William Jessup University's Response in Opposition to Plaintiffs' TRO/PI, Dkt. 55; (3) CCCU's Motion for Leave to File Proposed Motion to Dismiss, Dkt. 68; and (4) Phoenix Seminary, Western Baptist College, and William Jessup University's Proposed Motion to Dismiss, Dkt. 54.

MEMORANDUM OF LAW

I. INTRODUCTION

Proposed-Intervenors are not currently parties to this case. Consequently, their Responses in Opposition to Plaintiffs' Motion for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Enter (Dkt. 53, 55), as well as their proposed Motions to Dismiss (Dkt. 54, 68) are improper at this stage of the proceedings and should not be considered by the Court when ruling on Plaintiffs' Motion for TRO/PI (Dkt. 44) or during the August 31, 2021, hearing on Plaintiffs' Motion for TRO/PI.

II. PROCEDURAL HISTORY

On March 29, 2021, Plaintiffs filed their Complaint for Declaratory and Injunctive Relief (Dkt. 1). On April 9, 2021, Phoenix Seminary, Western Baptist College, and William Jessup University filed a Motion to Intervene (Dkt. 8).

On April 20, 2021, the Department of Justice appeared on behalf of all Defendants (Dkt. 21).

On May 12, 2021, the Council for Christian Colleges & Universities filed a Motion to Intervene (Dkt. 26). On May 13, 2021, Phoenix Seminary, Western Baptist College, and William Jessup University filed a Proposed Motion to Dismiss (Dkt. 32).

On June 7, 2021, Plaintiffs filed their First Amended Complaint (Dkt. 35) (“FAC”).

On June 8, 2021, Defendants filed their Response in Opposition to Proposed-Intervenors’ Motions to Intervene (Dkt. 36). Defendants filed their Amended Opposition to Proposed-Intervenors’ Motions to Intervene the following day (Dkt. 37).

On August 5, 2021, Plaintiffs filed their Motion for Temporary Restraining Order and Order to Show Cause Why Preliminary Injunction Should Not Enter (Dkt. 44) (“Plaintiffs’ Motion for TRO/PI”). On August 9, 2021, Proposed-Intervenor Council for Christian Colleges & Universities filed a Response in Opposition to Plaintiffs’ Motion for TRO/PI (Dkt. 53).

On August 9, 2021, Phoenix Seminary, Western Baptist College, and William Jessup University filed a Proposed Motion to Dismiss FAC (Dkt. 54) and a Proposed Response in Opposition to Plaintiffs’ Motion for TRO/PI (Dkt. 55).

Defendants filed their Motion to Dismiss Plaintiffs’ FAC on August 9, 2021 (Dkt. 56). On August 13, 2021, Defendants filed their Memorandum in Opposition to Plaintiffs’ Motion for TRO/PI (Dkt. 62). On August 17, 2021, Plaintiffs filed their Reply in support of Plaintiffs’ Motion for TRO/PI (Dkt. 64).

On August 18, 2021, Proposed-Intervenor Council for Christian Colleges & Universities filed a Motion for Leave to File Motion to Dismiss Plaintiffs’ FAC (Dkt. 68). On August 19, Defendants filed a Response to Proposed-Intervenor Council for Christian Colleges &

Universities’ Motion for Leave to File Motion to Dismiss FAC in which Defendants continue to oppose Proposed-Intervenors’ Motions to Intervene (Dkt. 70).

A hearing on Plaintiffs’ Motion for TRO/PI is scheduled for August 31, 2021 (Dkt. 58).

III. ARGUMENT

Proposed-Intervenors’ Motions to Intervene remain contested by Defendants (Dkt. 37, 70) and have not been ruled on by the Court. Consequently, Proposed-Intervenors are not Parties to this litigation. *People Who Care v. Rockford Bd. of Educ., Sch. Dist. No. 205*, 171 F.3d 1083, 1089 (7th Cir. 1999) (“an applicant for intervention is not a party”); BLACK’S LAW DICTIONARY 1232 (9th ed. 2009) (defining “party” as “one by or against whom a lawsuit is brought”).

Federal Rule of Civil Procedure 65(a)(1) provides that the “court may issue a preliminary injunction only on notice to the adverse *party*.” (emphasis added). The Rules also provide that where parties have obtained a temporary restraining order without notice, “the *adverse party* may appear and move to dissolve or modify the order.” FED. R. CIV. PRO. 65(b)(4) (emphasis added). Moreover, Plaintiffs’ Motion for TRO/PI will only bind Defendants, as parties, and will not bind the non-party Proposed-Intervenors. FED. R. CIV. PRO. 65(d)(2) (persons bound by TRO/PI limited to “(A) the parties; (B) the parties’ officers, agents, servants, employees, and attorneys; and (C) other persons who are in active concert or participation with [them].”)

Thus, Proposed-Intervenors lack standing to file Responses in Opposition to Plaintiffs' Motion for TRO/PI. See *PDC Energy, Inc. v. DCP Midstream, LP*, 2014 WL 12676230, *1, n. 1 (D. Colo. Sept. 3, 2014); see also *King Lincoln Bronzeville Neighborhood Ass'n v. Blackwell*, 2009 WL 633192 (S.D. Ohio Mar. 5 2009) (granting plaintiffs' motion to strike proposed intervenors' motions to initiate criminal contempt proceedings and for an expedited conference); *Gallucci v. Boiron, Inc.*, 2012 WL 12864924 * 3 (C.D. Cal. April 25, 2012) ("Because this Court denies proposed intervenor's motion to intervene, proposed intervenor lacks standing to move to strike the motion for class action settlement."). Moreover, none of the Proposed-Intervenors sought leave to file a Response in Opposition to Plaintiffs' Motion for TRO/PI or attempted to confer with Plaintiffs regarding such a motion for leave to file. Consequently, the Court should strike Proposed-Intervenors' Responses in Opposition to Plaintiffs' Motion for TRO/PI.

For similar reasons, Proposed-Intervenors lack standing to file Motions to Dismiss, which the Court should also strike. See *Coalition to Defend Affirmative Action v. Granholm*, 240 F.R.D. 368, 377 (E.D. Mich. 2006) (motion to dismiss filed by proposed intervenor stricken because not filed by proper party to case), *aff'd*, 501 F.3d 775 (6th Cir.2007) (*cert. denied*).

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request an order striking: (1) CCCU's Response to Plaintiffs' TRO/PI, Dkt. 53; (2) Phoenix Seminary, Western Baptist College, and William Jessup University's Response in Opposition to Plaintiffs' TRO/PI, Dkt. 55; (3) CCCU's Motion for Leave to File Proposed Motion to Dismiss, Dkt. 68; and (4) Phoenix Seminary, Western Baptist College, and William Jessup University's Proposed Motion to Dismiss, Dkt. 54.

Plaintiffs further request that the Court decline to consider such filings when ruling on Plaintiffs' Motion for TRO/PI or during the August 31, 2021, hearing on Plaintiffs' Motion for TRO/PI.

Date: August 20, 2021

s/ Paul Carlos Southwick

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